

**STATE OF MAINE**

**DEPARTMENT OF MARINE RESOURCES**

<b>IN THE MATTER OF THE APPLICATION OF )</b> <b>ISLAND AQUACULTURE CORP. FOR )</b> <b>RENEWAL OF AN AQUACULTURE LEASE )</b> <b>LOCATED NORTH OF SCRAG ISLAND IN )</b> <b>SWANS ISLAND, HANCOCK COUNTY, MAINE )</b>	<b>FINDINGS OF FACT,</b> <b>CONCLUSIONS OF LAW</b> <b>AND DECISION</b>
--	--

On January 28, 2004 Island Aquaculture Corp. of Machiasport, Maine applied for the renewal of an aquaculture lease to raise Atlantic salmon, Atlantic cod and haddock totaling 18.83 acres in the coastal waters of the State of Maine, located north of Scrag Island in Swans Island, Hancock County, Maine. The applicant requested a ten-year renewal, to June 14, 2014. A public hearing on this application was held on August 3, 2004 on Swans Island.

Applications for aquaculture lease renewals are governed by 12 M.R.S.A. §6072(12) and Chapter 2.45 of the Department's rules, which provide that an aquaculture lease shall be renewed if the lessee has complied with the lease agreement during its term; the Commissioner determines that renewal of the lease is in the best interest of the state; the renewal will not cause the lessee to be a tenant of any kind in leases covering an aggregate of more than 300 acres<sup>1</sup>; and the lease is not being held for speculative purposes.

**Evidence Introduced Concerning the Nature**  
**and Impact of the Proposed Lease**

The evidentiary record before the Department regarding this renewal application includes the Department files and the record of the August 3, 2004 public hearing. At the public

---

<sup>1</sup> Pursuant to 12 M.R.S.A. §6072-A(13-A), the Commissioner may authorize a person to exceed the 300 acre limit, up to a maximum of 500 acres, provided that no more than 300 acres are "non-fallowed" at any time.

hearing, testimony was given by the applicant, Island Aquaculture Corp., the Department's Aquaculture Environmental Coordinator, Jon Lewis, and two members of the public.

Robert Sweeney, representing Cooke Aquaculture<sup>2</sup>, (hereafter referred to as the applicant), provided written and oral testimony regarding the request to renew the lease. He testified that the lease site is not currently being used because they were waiting for a lease renewal prior to stocking fish on the site. According to the applicant, they had a superchill event on the site in the winter of 2002-2003 and the site has not been used for aquaculture following the superchill event due to a court order. The applicant stated that they intend to stock the site either in the fall of this year or spring of next year if the lease is renewed. In response to questions by local lobstermen, the applicant stated that they do not plan to expand operations beyond past practices, and that the gear will consist of 16, 100-meter cages that will be placed in the grid that is currently on site. Local lobstermen also questioned the applicant regarding floating rope that is currently on the lease site. The applicant testified that they do use float rope on the site, but that they will weight it to keep it submerged.

The Department's Aquaculture Environmental Coordinator (AEC) provided testimony regarding the renewal application. The AEC testified that the Department monitors finfish aquaculture lease sites through the Finfish Aquaculture Monitoring program by reviewing water quality information, diver video surveys taken in the spring and fall, and sediment cores taken by the divers. The AEC stated that he has been with the department since 1997 and provided a summary of his observations of the applicant's lease operations during that time. According to the AEC, the lease operations had one problem with a buildup of feed in six years. He testified that, other than the one problem, the lease site has been very clean environmentally. In response to concerns regarding a nearby lease site in Toothacker Cove, the AEC explained that the two lease sites are very different in terms of their environmental characteristics and that the hard bottom and strong current of the Scrag Island lease site provide a good environment for a salmon farm.

Swans Island selectman Dexter Lee testified that the selectmen were taking no position on the renewal application. Swans Island fisherman Phil Dzigzyk testified that he fishes right on the edge of the lease site. He expressed concerns regarding the loss of fishing gear due to the movement of pens and barges. He testified that the fishermen should be given adequate notice of the time and course of gear and barge movement.

### **Findings of Fact**

The record, including the Department's files and the AEC's testimony concerning the monitoring of the lease site, contains no indication that the applicant has failed to comply with the lease agreement during its ten years of operation. The applicant has had one problem with feed buildup in the past six years, but has otherwise been very clean environmentally. Therefore, I find that the applicant has complied with the lease agreement during its term.

In determining whether the lease is being held for speculative purposes, the Department looks to whether substantially no aquaculture or research has been conducted on the lease site. Due to superchill and court order, the site has not been used for aquaculture since the winter of 2002-2003. Prior to that, however, the lease site was actively used for salmon farming. Accordingly, substantial aquaculture has been conducted on the lease site over the term of the lease. Therefore, I find that the lease is not being held for speculative purposes.

In determining whether it is in the best interest of state to renew the lease, the Department takes into consideration, among other things, the potential for conflict with other new or existing uses of the area which the Commissioner determines to be a higher use of the area from the perspective of the public interest. The floating rope used on the lease site and the movement of gear to and from the site are potential hazards to the lobstermen fishing in the area of the lease site. These hazards would be minimized by weighting the float rope and by providing sufficient notice to the area fishermen as to when the gear will be moved. Based on the evidence in the record, I find that as long as those two conditions are met, the lease activities

---

<sup>2</sup> In April 2004, Cooke Aquaculture Inc. purchased Island Aquaculture Corp.

do not conflict with other new or existing higher uses of the area, and therefore it is in the best interest of the State to renew the lease.

The applicant, Island Aquaculture Corp., holds two other aquaculture leases, totaling 33 acres. The parent company, Cooke Aquaculture, holds an additional 11 aquaculture leases totaling 185.33 acres. With renewal of this lease, Cooke Aquaculture would hold a total of 237.16 acres. Therefore, the renewal will not cause the applicant to be a tenant of any kind in leases covering an aggregate of more than 300 acres.

### **Conclusions of Law**

Based on the above findings, I conclude that the applicant has met the requirements for the renewal of an aquaculture lease set forth in 12 M.R.S.A. §6072.

### **Decision**

The Commissioner of Marine Resources grants the application of Island Aquaculture Corp. for renewal of the 18.83-acre aquaculture lease located north of Scrag Island in Swans Island, Maine, for a period of ten years, to June 14, 2014. In the renewal of this lease, Island Aquaculture Corp. is subject to the same terms, conditions, and obligations as set forth in the original lease, as well as the additional conditions set forth below.

### **Additional Conditions to be Imposed on the Lease**

The Commissioner may establish conditions that govern the use of the lease area and impose limitations on aquaculture activities. Conditions are designed to encourage the greatest multiple, compatible uses of the lease area, while preserving the exclusive rights of the lessee to the extent necessary to carry out the purposes of the aquaculture law.

The following additional conditions are placed on this lease:

- (1) The leaseholder shall take all reasonable measures to submerged float rope used on the lease site; and
- (2) The leaseholder shall provide at least two weeks notice to local fishermen prior to moving aquaculture gear to or from the lease site. Such notice may be given directly to the affected fishermen or by posting a public notice on Swans Island. The notice shall include the date of the gear movement and the course through which it will be moved.

The Commissioner may commence revocation procedures if he determines that substantial aquaculture has not been conducted within the preceding year or that the lease activities are substantially injurious to marine organisms. If any of the conditions or requirements imposed in this decision, in the lease, or in the law are not being observed, the Commissioner may revoke the aquaculture lease.

**Dated:** \_\_\_\_\_

\_\_\_\_\_  
**George D. Lapointe (Commissioner)**  
**Department of Marine Resources**